

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

STATE OF TEXAS,

Plaintiff,

v.

**MERRICK GARLAND**, in his official capacity as  
Attorney General, *et al.*,

Defendants.

Case No. 5:23-cv-00034-H

**JOINT MOTION FOR CONTINUANCE WITH THE PARTIES' COMPETING  
SCHEDULING PROPOSALS**

On October 20, 2023, the Court “notifie[d] the parties that it will advance the trial on the merits and consolidate it with the motions hearing” that had previously been scheduled for October 30, 2023. ECF No. 73 at 1. The Court instructed the parties that, “[a]t trial, [they] should be prepared to discuss and, if necessary, present evidence regarding” eleven topics. *Id.* at 2–3. The Court stated that, “[i]f, in light of this notice, a party will need additional time to gather evidence for the trial on the merits, that party may request a continuance of the October 30, 2023 trial date.” *Id.* at 3. The parties conferred regarding the Court’s notice and the potential need for a continuance. The parties agree that additional time is necessary to adequately prepare for trial, including to gather the evidence requested by the Court and any other evidence that may be relevant to a final decision on the merits in this case. The parties disagree, however, on when trial and the accompanying pre-trial deadlines should specifically occur. Plaintiff requests that the trial date be continued to November 20, 2023. Defendants request that the current trial date be vacated and reset at a later date after the parties complete their proposed pre-trial steps described below.

The parties’ respective proposals are set forth below.

**Plaintiff’s Position**

In advance of trial, Plaintiff proposes that the parties exchange declarations addressing the

topics covered by the Court's October 20 notice. Plaintiff proposes that the parties exchange these declarations—and any declarations subject to the Court's October 16 minute order and previously due on October 24, 2023—by November 1, 2023. After the declarations are exchanged, Plaintiff proposes that the parties confer about a possible agreement regarding the admissibility of such declarations and the possible exchange of responsive declarations. Plaintiff proposes that, by November 7, 2023, the parties will notify the Court whether they have reached such an agreement, and, if not, the parties will present a joint proposal, or, if necessary, separate proposals, regarding the presentation of evidence at trial. Such proposal (or proposals) will contain proposed deadlines for any potential objections and responsive declarations. Plaintiff proposes that the parties file a final list of trial exhibits by November 17, 2023, and that trial be held on November 20, 2023. After diligently working with its agencies to acquire declarations relevant to this case, Plaintiff believes that November 20 provides sufficient time for the parties to present their case. Thus, Plaintiff disagrees with Defendants that trial should be vacated indefinitely.

### **Defendants' Position**

Defendants agree that the parties should first exchange declarations addressing the topics covered by the Court's October 20 notice. Defendants propose that the parties be afforded two weeks to prepare these declarations and propose that the parties exchange them, and any declarations subject to the Court's October 16 minute order and previously due on October 24, 2023, by November 6, 2023. After the declarations are exchanged, Defendants propose that the parties confer about the substance of their respective declarations and the subjects identified in the Court's standard scheduling order for civil cases, including discussing whether discovery is necessary, proposed dates for pre-trial disclosures, and a proposed trial date. By November 13, 2023, Defendants propose that the parties file a status report and proposed scheduling order for the Court's consideration.

Defendants request that the parties undertake these steps before trial to allow the parties

sufficient time to gather evidence and to conserve judicial resources by narrowing the disputed issues necessitating resolution at trial. Pending before the Court are Plaintiff's motion for a preliminary injunction and Defendants' motion to dismiss. To date, neither party has moved for summary judgment, and Plaintiff has not yet submitted a declaration in this case. Accordingly, Defendants are not yet aware of the extent to which discovery might be necessary to challenge assertions in such declarations. Because the motions hearing has been consolidated with a trial on the merits, and to preserve Defendants' right to develop an adequate factual record at trial, including for any appeal, Defendants request a sufficient opportunity to review Plaintiff's declarations and determine whether any subsequent discovery may be required. At this time, and until they have had an opportunity to review the factual assertions in Plaintiff's declarations, Defendants do not yet know the extent to which discovery will be required prior to trial.

\* \* \*

The parties set forth the dates described herein in the attached proposed order.

**CERTIFICATE OF CONFERENCE**

I certify that on October 20, 2023, and October 23, 2023, undersigned counsel conferred regarding this motion. The parties agree that the October 30, 2023 trial date should be continued; Plaintiff proposes that it be continued to November 20, 2023, and Defendants propose that it be vacated and set at a later date after the parties complete the proposed pre-trial steps described above.

Dated: October 23, 2023

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

GRANT DORFMAN  
Deputy First Assistant Attorney General

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Director, Federal Programs Branch

LESLEY FARBY  
Assistant Branch Director

RYAN D. WALTERS  
Chief, Special Litigation Division  
Texas Bar No. 24105085  
ryan.walters@oag.texas.gov

ETHAN SZUMANSKI  
Special Counsel  
Texas Bar No. 24123966  
ethan.szumanski@oag.texas.gov

OFFICE OF THE ATTORNEY GENERAL  
OF TEXAS  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2100

ROBERT HENNEKE  
Texas Bar No. 24026058  
rhenneke@texaspolicy.com

CHANCE WELDON  
Texas Bar No. 24076767  
cweldon@texaspolicy.com

MATTHEW MILLER  
Texas Bar No. 24046444  
mmiller@texaspolicy.com

NATE CURTISI  
Arizona Bar No. 033342  
ncurtisi@texaspolicy.com

TEXAS PUBLIC POLICY FOUNDATION  
901 Congress Ave.  
Austin, Texas 78701  
(512) 472-2700

*Counsel for the State of Texas*

/s/ Michael J. Gaffney  
MICHAEL J. GAFFNEY (D.C. Bar No.  
1048531)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, N.W.  
Washington, D.C. 20005  
Tel: (202) 514-2356  
Fax: (202) 616-8470  
Email: michael.j.gaffney@usdoj.gov

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2023, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Michael J. Gaffney

MICHAEL J. GAFFNEY

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, N.W.

Washington, D.C. 20005

Tel: (202) 514-2356

Fax: (202) 616-8470

Email: michael.j.gaffney@usdoj.gov